IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 31 OF 1999.

N.S. Quirtany (now deceased),
by his L.Rs.:
1. Smt. Kala N. Kirtany,
   Aquem, Alto Margao.
2. Priya N. Kirtany,
3. Pradnya N. Kirtany. ... Appellants.

Versus

State of Goa rep. by
Executive Engineer,
Works Division VI,
P.W.D., Fatorda, Margao. ... Respondent.

Mr. C. Mascarenhas, Advocate for the Appellants.

Mr. H.R. Bharne, Government Advocate for the Respondent.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 18th June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Award passed was filed before the III Additional Civil Judge, Senior Division, Margao, and was numbered as Arbitration Special Civil Suit No. 264/94/III. The learned Civil Judge returned the papers relying on the Judgment in the case of **M/s. Reshma Constructions v. State of Goa,** 1998 (1) Goa Law Times 311. That Order was the subject matter of challenge. In the meantime the Judgment in M/s. Reshma Constructions was considered by the Apex Court in **Thyssen Stahlunion GMBH v. Steel Authority of India Ltd.,** 1999 (6) Scale 441. It is not necessary for us to go into the ratio of the Judgment as the matter came up for consideration before the Apex Court once again in

the case of **M/s. N.S. Nayak & Sons v. State of Goa,** 2003 (4) Scale 622. The Apex Court has therein explained the correct ratio in Thyssen Stahlunion GMBH v. Steel Authority of India Ltd. (Supra). The Apex Court has now made it clear that the Judgment in Thyssen Stahlunion GMBH (Supra) has nowhere laid down that pending arbitral proceedings, which were being conducted as per the procedure prescribed under the Old Act, the parties have option of changing the procedure. In other words it is clear that once the proceedings commenced under the Arbitration Act of 1940, subsequent proceedings including challenge to the Award would be under the Act of 1940 and not the Act of 1996.

That being the case, the Order of the learned trial Judge, dated 29th April 1999 is set aside. The matter is remanded to the trial Court for disposal of the matter on merits. Order accordingly. There shall be no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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